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OFFICE OF PETITIONS

In re Patent No. 7,591,020 : DECISION ON REQUEST
Kammer et al. : FOR
Issue Date: September 15, 2009 : RECONSIDERATION OF
Application No. 10/053,013 : PATENT TERM ADJUSTMENT
Filed: January 18, 2002 : and
Atty Docket No. 035451-0170 : NOTICE OF INTENT TO ISSUE
(3708.PALM) : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on October 9, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, eight hundred and forty-one (1841) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by **one thousand, nine hundred and twenty-three (1923)** days.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on January 19, 2005 ends on March 26, 2009, the day before the first RCE was filed, which amounts to 1528 (not 1529) days. See U.S.C. 154(b)(1)(B)(i). Therefore, the three-year period amounts to 1528 days.

However, the time consumed by appellate review, beginning on the day the Notice of Appeal was filed (February 27, 2007) and ending on the date on which the non-final Office action was mailed (September 5, 2007), is excluded from the period of B-delay. See 35 U.S.C. § 154(b)(1)(B)(ii). This period is 191 days.

Further, 91 days of the "A" delay overlaps with the "B" delay.

As such, the "B" delay is (1528 - 191 excluded days - 91 days of overlap) 1246 days. (The 575 day period of adjustment for "B" delay entered at issuance is being removed and the period of adjustment of 1246 days is being entered).

Furthermore, patentee's calculation accords 209 days of Applicant delay associated with the submission of the RCE on March 27, 2009. This RCE was filed less than three months from the mailing of the preceding final rejection on February 10, 2009, and as such, did not result in any Applicant delay¹.

The revised patent term adjustment is 1923 (954 + 1246 - (89 + 62 + 50 + 76²)) days.

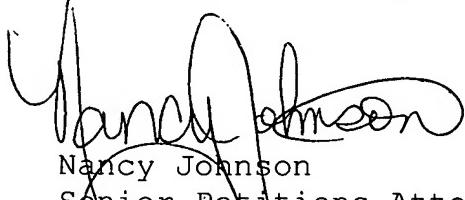
The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, nine hundred and twenty-three (1923)** days.

¹ It is noted in passing that Patentee has asserted that the total Applicant delay is 360 days, however patentee's calculation (which omits the 76-day period and includes the 209-day period) adds up to 410 days.

² Patentee's calculation fails to consider the 76 days of Applicant delay that is associated with the July 2, 2009 submission of an amendment under 37 CFR 1.312 after the mailing of the notice of allowance. See 37 CFR 1.704(c)(10).

Telephone inquiries specific to this matter should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,591,020 B2

DATED : September 15, 2009 DRAFT

INVENTOR(S) : Kammer et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1252 days

Delete the phrase "by 1252 days" and insert – by 1923 days--